



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 10599841

Date: SEPT. 24, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an artisan, photographer, and fashion designer, seeks classification as an individual of extraordinary ability. This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, and we dismissed the appeal. Subsequently, we denied two previous motions.<sup>1</sup> The matter is now before us on a third motion to reconsider and a motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will deny the motions.

**I. LAW**

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also*

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<sup>1</sup> *See* In Re: 5303295 (Jan. 16, 2020), for our most recent decision.

*Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

Further, a motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. BACKGROUND

The Director determined that the Petitioner satisfied only one criterion, display under 8 C.F.R. § 204.5(h)(3)(vii). In her first motion, we concluded that the Petitioner met a second criterion, leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). In her second motion, although the Petitioner presented additional evidence relating to published material under 8 C.F.R. § 204.5(h)(3)(iii) and high salary under 8 C.F.R. § 204.5(h)(3)(ix), we decided that she did not establish her eligibility for either one. Thus, the Petitioner did not demonstrate that she fulfilled at least three of the ten criteria, in order to conduct a final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

## III. ANALYSIS

### A. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). At the outset, the Petitioner contends that “[i]f the Petitioner satisfied at least one of the ‘published material’ or ‘high salary’ criterium, she would qqualify [sic] as an alien with extraordinary ability.” However, once a petitioner meets at least three criteria, the totality of the evidence is then considered in a final merits determination to assess whether the record reflects sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20. Further, after extraordinary ability is shown, then a petitioner must establish that he or she seeks to enter the United States to continue to work the area of extraordinary ability, and that he or she will substantially benefit prospectively the United States. *See* section 203(b)(1)(A)(ii) and (ii) of the Act.

Regarding our decision relating to the published material criterion, the Petitioner argues:

As it is evident from the last decision in the present case, USCIS operates under the presumption that the published material be “primarily about the beneficiary and the beneficiary’s work,” when there is no basis in the regulations for this requirement.

...

In the present case, the articles presented in Domus Design not only mention the Petitioner but also refer to her as the interior photographer. In addition, the article of  2006 states on its last page:

[redacted] have used stylish accessories to soften the strict orthogonal details, inspired by the Japanese home. This resulted in a delicate glamour, which was a finishing touch in the interior design of the apartment – light, dynamic, room inspiring to explore the beauty of the universe.”

In our most recent decision, however, we did not require that published material be primarily about the beneficiary. In fact, we stated:

In the instant motion, she again provides two articles published in the magazine *domus design*. The first, published in [redacted] 2006, has already been submitted, reviewed, and considered. Accordingly, we will not address it in this proceeding. The second, published in [redacted] 2007, while previously submitted lacked a complete translation. On second motion, the Petitioner provides this article, which credits her with “photographs in the interior,” and its complete translation. She asserts that it features her work, and directs our attention to a page in which the editor references “fresh paints posters with large lilies.” However, the article is about the apartment and its design, not about the Petitioner. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

(footnotes omitted).

Again, the Petitioner did not establish that the articles from *domus design* reflect “[p]ublished material about the alien . . . relating to the alien’s work in the field” consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii). (emphasis added). The articles contain descriptions and photographs of the interior of apartments without showing published material about her. Although the articles mention the Petitioner as one of the designers, they do not discuss her; and therefore, do not represent published material about her. In fact, as evidenced by the Petitioner’s quote from the [redacted] 2016 article, the material indicates a discussion of the stylish accessories in the apartment rather than about her.

Moreover, the Petitioner did not demonstrate that *domus design* qualifies as a professional or major trade publication or other major medium. The Petitioner does not contest or address our decision regarding this issue, nor did she show that we incorrectly applied law or policy.

As it relates to the high salary criterion, in her first motion, the Petitioner presented an interior design proposal and a copy of a 2017 IRS Form 1099 reflecting nonemployee compensation of \$9,800; however, she did not include evidence demonstrating how this remuneration compared with that of other interior designers. In the second motion, she submitted evidence of occupational employment and wage estimate entries from the U.S. Bureau of Labor Statistics, average salary reports from Payscale.com, and a printout of job postings from indeed.com and upwork.com for fashion designers and photographers. However, we concluded that her evidence reflects remuneration as an interior designer as opposed to her comparable salary evidence for fashion designers and photographers. Further, the Petitioner did not provide evidence of past remuneration for work in the fields of fashion design and photography.

On motion, the Petitioner claims that she “acted in this project as a photographer, not an interior designer.” Specifically, the Petitioner asserts:

[She] has used her Photographs to consult with [the] client. The customer provided the photographer [the Petitioner] with the alleged designs of the bedrooms of his future home. The photographer had the task of creating bedding with a collage from his copyright photographs from the [ ] series.

During conversations with the customer, different photos were tested, colors that were in tune with the taste of the client were selected. Unique combinations of photographs by shades were created in the order that the customer chose. His requirements were to create such a color of fabric from photographs that would soothe and delight the eye, create an atmosphere of comfort and lift his mood. After the final selection of photographs, [she] created collages from photographs selected by the client, and then the designer who created the bedroom interior design wrote them in the design for clarity, at the request of the customer.

Although she submits copies of photographs claiming to be from the project, the Petitioner did not demonstrate that they corroborate her assertions on motion. The Petitioner did not establish that she performed work for the “Bedroom Design Concept” as a photographer. In fact, the Petitioner first claims that she used her photographs and then later claims that she created a collage from the client’s photographs.

Notwithstanding the above, the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the Petitioner to show that she command a high salary or other significantly high remuneration for services in relation to others in the field. Although she provided salary data for fashion designers and photographers, the Petitioner did not demonstrate that she earned a salary. Rather, as evidenced by the IRS Form 1099, the client compensated her for services for the “Bedroom Design Concept.” Thus, the Petitioner must establish that she commanded significantly high remuneration for services for work on the design project in relation to other remuneration for services of other interior designers. Furthermore, the comparison to average salaries of fashion designers and photographers does not meet this criterion.

For the reasons discussed above, the Petitioner did not establish that we incorrectly applied law or policy in our latest decision. Therefore, we will deny her motion to reconsider.

#### B. Motion to Reopen

We will similarly deny the Petitioner’s motion to reopen. A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). Regarding the published material criterion, the Petitioner submits a 2014 article from *Photographer* reflecting published material about her relating to her work. However, the Petitioner did not demonstrate that *Photographer* qualifies as a professional or major trade publication or other major medium. Although she presents screenshots from *Photographer’s* website, the Petitioner did not present objective, probative evidence to corroborate the website’s assertions. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007), *aff’d* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of

a magazine as to the magazine's status is not reliant evidence of a major medium). Furthermore, while the website and inside cover of the magazine claim a circulation of 21,500 copies, the Petitioner did not show the significance of the figures to establish *Photographer's* status as a professional or major trade publication or other major medium.<sup>2</sup>

As it relates to the high salary criterion, the Petitioner asserts that she "is now submitting an invoice and pictures for work performed at [REDACTED] for which she was paid a total of \$3,374.79 for one digital print Size: 18" on metallic paper and framing showing an extremely high remuneration for one digital print size of 18" x 24." However, the invoice and check are dated after the filing of the initial petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we need not further address this claim on motion.

As discussed, the Petitioner's evidence does not satisfy at least three of the evidentiary criteria. Accordingly, we will deny her motion to reopen.

#### IV. CONCLUSION

The Petitioner has not shown that we incorrectly denied her previous motion based on the record before us, nor does her new evidence on motion demonstrate that she has fulfilled at least three criteria.

**ORDER:** The motion to reconsider is denied.

**FURTHER ORDER:** The motion to reopen is denied.

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<sup>2</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>. See USCIS Policy Memorandum PM 602-0005.1, *supra*, (providing that evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation, on-line or in print, is high compared to other circulation statistics and show the intended audience of the publication).